

STATE OF CONNECTICUT
BOARD OF EXAMINERS FOR
EMBALMERS AND FUNERAL DIRECTORS

Edward A. Zigas, Embalmer
License No. 001557

Petition No. 990414-030-005

MEMORANDUM OF DECISION

Procedural Background

The Department of Public Health (the "Department") presented the Board of Examiners for Embalmers and Funeral Directors (the "Board") with a Statement of Charges (the "Charges") brought against Edward Zigas ("respondent") dated October 3, 2000. (Dept. Exh. 5.) The Charges, along with the Notice of Hearing, was sent to respondent by certified mail, return receipt requested, and first class mail on February 13, 2001. The Notice of Hearing notified respondent that the hearing would be held before the Board on March 6, 2001. (Dept. Exh. 5.)

The hearing date was thereafter continued to May 22, 2001. Respondent received Notice of that hearing. (Dept. Exhs. 1, 2.)

On March 1, 2001, the Department filed a Motion to Deem Allegations Admitted due to respondent's failure to file an Answer. On May 22, 2001, the Board granted the Department's Motion. (Dept. Exh. 3; Tr. pp. 14-19.)

On May 22, 2001, the Board held an administrative hearing to adjudicate respondent's case. Although the Department made sufficient and reasonable efforts to effectuate notice, respondent neither appeared nor was represented; Attorney Ellen Shanley, Esq. represented the Department.

The Board conducted the hearing in accordance with General Statutes of Connecticut Chapter 54 (the "Uniform Administrative Procedure Act") and the Regulations of Connecticut State Agencies §19a-9-1, *et seq.* All Board members involved in this decision received copies of the entire record. All Board members involved in this decision attest that they have heard the case or read the record in its entirety. This decision is based entirely on the record. To the extent that the findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *SAS Inst., Inc. v. S & H. Computer Systems, Inc.*, 605 F.Supp. 816 (M.D. Tenn 1985).

Allegations

1. In paragraphs 1, 5, and 8 of the Charges, the Department alleges that respondent is and has been at all times referenced in the Charges, the holder of Connecticut embalmer license no. 001557 and owner of Edward A. Zigas Funeral Home in New Britain, Connecticut (the "Funeral Home"), which no longer operates.

Count One

In Count One of the Charges, the Department alleges that respondent violated sections 20-227(2), (4), and/or (5); 42-202(a), (b), (c), and/or (d); and/or 42-206 of the General Statutes of Connecticut as follows:

2. In paragraph 2 of the Charges, the Department alleges that on or about March 17, 1997, respondent entered into a Pre-Need Agreement with petitioner Charles Zipadelli (the "petitioner") in the amount of \$3,142.00.
3. In paragraph 3 of the Charges, the Department alleges that respondent failed to:
 - a. deposit petitioner's funds into an escrow account;
 - b. appoint an escrow agent to administer and maintain such account;
 - c. properly invest such escrow account;
 - d. properly credit earned income to such account; and/or,
 - e. provide petitioner with annual statements related to his Pre-Need Agreement.

Count Two

In Count Two of the Charges, the Department alleges that respondent violated sections 20-227(2), (4), and/or (5); 20-230a; and/or 20-230b of the General Statutes of Connecticut as follows:

4. In paragraph 6 of the Charges, the Department alleges that on or about January 31, 1999, petitioner made funeral arrangements with respondent for Lillian Zipadelli whereby respondent failed to provide petitioner with the following:
 - a. a casket price list;
 - b. an outer burial container price list;
 - c. a general price list; and/or
 - d. a Statement of Funeral Goods and Services Selected contract.

Count Three

In Count Three of the Charges, the Department alleges that respondent violated sections 20- 212; 20-222(a); 20-227(2) and/or (5) of the General Statutes of Connecticut¹ as follows:

5. In paragraph 9 of the Charges, the Department alleges that the Funeral Home was the holder of Connecticut funeral home license no. 000421 until the license expired on June 30, 1998 and has not held a current license since that date.
6. In paragraph 10 of the Charges, the Department alleges that respondent conducted at least eight funerals at the funeral home between June 30, 1998 and April 1999.

Findings of Fact

1. The Department provided adequate, reasonable, and actual notice of the hearing in this matter by sending such notice to respondent. Respondent received the Notice of Hearing. (Dept. Exhs. 1, 2, 3, 5; Tr. pp. 3-4, 6-9.)
2. Respondent did not file an Answer to the allegations contained in the Statement of Charges. (Tr. pp. 5-6.)
3. All of the factual allegations contained in the Statement of Charges are deemed admitted. (Dept. Exh. 4; Tr. pp. 14-19.) In particular, that:
 - a. respondent is and has been at all times referenced in the Charges, the holder of Connecticut embalmer license no. 001557 and owner of the Funeral Home, which is no longer in operation;
 - b. on or about March 17, 1997, respondent entered into a Pre-Need Agreement with the petitioner in the amount of \$3,142.00;
 - c. respondent failed to:
 - (1) deposit petitioner's funds into an escrow account;
 - (2) appoint an escrow agent to administer and maintain such account;
 - (3) properly invest such escrow account;
 - (4) properly credit earned income to such account; and/or,
 - (5) provide petitioner with annual statements related to his Pre-Need Agreement.

¹ On May 22, 2001, the Department filed a Motion to Amend the Charges to delete allegations that the conduct alleged in Count Three constituted grounds for disciplinary action pursuant to section 42-201 of the General Statutes of Connecticut. The Board granted the Department's Motion. (Dept. Exh. 4; Tr. p. 5.)

- d. on or about January 31, 1999, petitioner made funeral arrangements with respondent for Lillian Zipadelli whereby respondent failed to provide petitioner with the following:
 - (1) a casket price list;
 - (2) an outer burial container price list;
 - (3) a general price list; and/or,
 - (4) a Statement of Funeral Goods and Services Selected contract.
- e. the Funeral Home was the holder of Connecticut funeral home license no. 000421 until the license expired on June 30, 1998, and has not held a current license since that date.
- f. respondent conducted at least eight funerals at the Funeral Home between June 30, 1998 and April 1999.

Discussion and Conclusions of Law

The Notice of Hearing, Statement of Charges provided sufficient legal notice as mandates by section 4-177(a) and (b), and section 4-182 of the General Statutes of Connecticut. The hearing was held in accordance with Chapters 54 and 368a of the General Statutes of Connecticut as well as sections 19-9-1, et seq. of the Regulations of Connecticut State Agencies.

The Notice of Hearing, Statement of Charges and the hearing process provided respondent with the opportunity to demonstrate compliance with all lawful requirements for the retention of his license as required by section 4-182(c) of the General Statutes of Connecticut.

The Department bears the burden of proof by a preponderance of the evidence. *Steadman v. Securities and Exchange Commission*, 450 U.S. 91, 101 S.Ct. 999, *reh'g denied*, 451 U.S. 9333 (1981); *Swiller v. Commissioner of Public Health*, CV 950705601, Superior Court, J.D. Hartford/New Britain at Hartford, Memorandum filed October 10, 1995.

Section 20-227 of the Connecticut General Statutes provides in pertinent part.

[T]he board may take any of the actions set forth in section 19a-17 ... if it finds the existence of any of the following grounds; ... (2) violation of the statutes or regulations of said department relative to the business of embalming or funeral directing in this state; ... (4) incompetency, negligence or misconduct in the carrying on of such business or profession; (5) violation of or noncompliance with the provisions of this chapter or the rules established hereunder; ...

The Board finds that the Department has sustained its burden of proof with regard to all of the allegations contained in the Charges. Since respondent did not file an Answer, the allegations are deemed admitted pursuant to section 19a-9-20 of the Regulations of Connecticut State Agencies. (Dept. Exh. 4; Tr. pp. 14-19.)

Accordingly, the Board finds that respondent violated sections 20-212; 20-222(a); 20-227(2), (4), and (5); 20-230a; 20-230b; 42-202(a), (b), (c), and (d); and 42-206 of the General Statutes of Connecticut.

Order

Pursuant to the authority vested in it by §19a-11 of the General Statutes of Connecticut, the Board orders the following discipline against respondent's embalmer license no. 001557:

1. Respondent shall pay a civil penalty of two thousand five hundred dollars (\$ 2,500.00) by certified or cashier's check payable to "Treasurer, State of Connecticut." The check shall reference the petition number on the face of the check, and shall be payable within thirty (30) days of the effective date of this Memorandum of Decision.
2. Respondent's license shall be suspended for a period of ninety (90) days. All three originals of respondent's license shall be provided to the Department within ten (10) days of the effective date of this Memorandum of Decision.
3. Following said suspension, respondent's license shall be placed on probation for a period of one year under the following terms and conditions:
 - a. Respondent shall provide his employer, partner and/or associate at any location at which he is employed or with which he is affiliated or has privileges throughout the probationary period, with a copy of this Memorandum of Decision within fifteen (15) days of commencement of said employment, partnership, association, and/or affiliation;
 - b. Respondent shall obtain at his own expense, the services of a licensed embalmer, pre-approved by the Department ("monitor"), to conduct a monthly review of all of respondent's records, created or updated during the term of probation, including but not limited to, the following:

- (1) Respondent's Statement of Goods and Services and price lists;
 - (2) Each and every Pre-Need and At-Need contract signed or entered into by respondent;
 - (3) Any and all documentation that respondent has deposited any and all funds received in compliance with the applicable statutes and regulations;
 - (4) Any and all documentation which identifies each and every escrow agent utilized by respondent;
 - (5) Any and all income generated from any and all escrow accounts, including, but not limited to, any and all Internal Revenue Service 1099 Forms issued by respondent or anyone on his behalf; and,
 - (6) Any and all At-Need Statements of Goods and Services.
- c. The monitor shall meet with respondent not less than once every month throughout the probationary period.
- d. The monitor shall have the right to monitor respondent's practice by any other reasonable means which he or she deems appropriate. Respondent shall fully cooperate with the monitor in providing such monitoring.
- e. Respondent shall be responsible for providing written monitor reports directly to the Department, monthly, throughout the probationary period. Such monitor's reports shall include documentation of dates and duration of meetings with respondent, number and a general description of the records reviewed, additional monitoring techniques utilized, and statement that respondent is practicing with reasonable skill and in compliance with the applicable statutes and regulations.
4. All correspondence and reports are to be addressed to:

Bonnie Pinkerton, Nurse Consultant
Department of Public Health
Division of Health Systems Regulation
410 Capitol Avenue, MS #12HSR
P.O. Box 34308
Hartford, CT 06134-0308

5. Respondent shall comply with all state and federal statutes and regulations applicable to his licensure.

6. Respondent shall be responsible for all costs associated with satisfaction of this Memorandum of Decision.

7. This Memorandum of Decision becomes effective as of the date of signature by the Board of Examiners for Embalmers and Funeral Directors.

The Board of Examiners for Embalmers and Funeral Directors hereby informs respondent, Edward A. Zigas, and the Department of Public Health of the State of Connecticut of this decision.

The Board of Examiners for Embalmers and Funeral Directors.

09-11-01

Date

Celia Pinzi

By: Celia Pinzi, Chairperson